



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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April 29, 2004

IN REPLY PLEASE

REFER TO FILE: WM-6

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2713

Dear Supervisors:

**SANTA CLARA RIVER WATERSHED FEASIBILITY STUDY
COST-SHARING AGREEMENT
SUPERVISORIAL DISTRICT 5
3 VOTES**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY
OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:**

- 1 Authorize the Director of Public Works, in his capacity as Chief Engineer of the Los Angeles County Flood Control District, or his designee, to execute a cost-sharing agreement with the U. S. Army Corps of Engineers and the Ventura County Watershed Protection District (VCWPD) following your Board's approval to conduct the Santa Clara River Watershed Feasibility Study to identify opportunities to address flood protection and sedimentation issues.
- 2 Authorize the Director of Public Works, in his capacity as Chief Engineer of the District, or his designee, to provide \$1.7 million of in-kind services from the Flood Control Fund over the estimated 3-year schedule of the study to cover the District's share of the total project cost estimate of \$8.2 million.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

We recommend that your Board authorize the Director of Public Works, or his designee, to execute a cost-sharing agreement with the Corps and the VCWPD to conduct a Santa Clara River Watershed Feasibility Study. The Corps, in conjunction with VCWPD, completed a reconnaissance study of the watershed and determined that

there is Federal interest in participating in a feasibility study to identify solutions to flood control issues within the watershed.

The Santa Clara Watershed Study area is about 1,600 square miles spanning from the Santa Clara Valley to the Pacific Ocean. The watershed is generally evenly divided between the Counties of Los Angeles and Ventura. The portion of the watershed within the County of Los Angeles comprises 772 square miles, and the area in Ventura County comprises 831 square miles.

The goal of the study is to identify flood protection and sedimentation problems and opportunities within the watershed. This will be accomplished by developing hydrologic, hydraulic, and sediment transport models of the entire watershed. The results will be mapped and integrated into a GIS database for analysis.

We anticipate that within the County of Los Angeles' portion of the watershed, the study will focus on potential flooding problems in the Acton, Agua Dulce, Bouquet, Mint, and Sand Canyon areas. If the study determines that there is Federal interest in addressing water resource problems within the watershed, this could result in the Corps participating in the design, construction, and cost-sharing funding of flood control improvements .

Implementation of Strategic Plan Goals

This action is consistent with the County Strategic Plan Goals of Fiscal Responsibility by developing partnerships to effectively leverage our resources and Organizational Effectiveness because of the cross jurisdictional collaborative efforts that will be formed by the cost-sharing agreement.

FISCAL IMPACT/FINANCING

The total project cost estimate of the study is \$8.2 million. The cost-sharing agreement specifies that the District would fund \$1.7 million of the cost of the study with Ventura County and the Corps funding \$2.2 million and \$4.3 million, respectively. At this time, it is anticipated that the District's share would be provided entirely through in-kind services. In the event that the study would require any consultant services in lieu of or in addition to the \$1.7 million and beyond the Director's delegated authority, we would return to your Board for approval. There would be no impact to the County's General Fund.

The Honorable Board of Supervisors
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Funds to initiate the work are available in the Fiscal Year 2003-04 Flood Control District Budget. Appropriations required to complete the study in future fiscal years will be requested through the annual County budget process.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The cost-sharing agreement has been reviewed as to form by County Counsel and is enclosed for your review.

ENVIRONMENTAL DOCUMENTATION

Approval of the cost-sharing agreement is an action that is not subject to the provision of the California Environmental Quality Act (CEQA) because it will not have a direct or indirect physical impact to the environment, as stated in Section 15061(b)(3) of the State CEQA Guidelines.

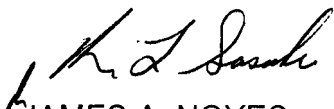
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There would be no adverse impacts on current services.

CONCLUSION

Please return three approved copies of this letter to Public Works

Respectfully submitted,



JAMES A. NOYES
Director of Public Works

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Enc.

cc: Chief Administrative Office
County Counsel

AGREEMENT
BETWEEN THE DEPARTMENT OF THE ARMY
AND
THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT
AND
THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
FOR THE SANTA CLARA RIVER WATERSHED STUDY

THIS AGREEMENT is entered into this _____ day, of _____, 20____, by and between the Department of the Army (hereinafter the "Government"), represented by the District Engineer executing this Agreement, and the Ventura County Watershed Protection District, represented by the Director, Public Works Agency, and Los Angeles County Flood Control District, represented by the Chief Engineer (hereinafter collectively referred to as the "Sponsors"),

WITNESSETH, that

WHEREAS, the Congress has authorized the Board of Engineers for Rivers and Harbors to conduct a study of, "... the Santa Clara River and its tributaries, Los Angeles and Ventura Counties, California, published as House Document No. 443, Eightieth Congress, first session, and other reports, with a view to determining whether the existing project should be modified in any way at the present time in the interest of flood control and allied purposes." pursuant to the Committee on Public Works, June 18, 1963; and

WHEREAS, the U.S. Army Corps of Engineers has conducted a reconnaissance study of the Santa Clara Basin Watershed Management Initiative, California pursuant to this authority, and has determined that further study in the nature of a "Feasibility Phase Study" (hereinafter the "Study") is required to fulfill the intent of the study authority and to assess the extent of the Federal interest in participating in a solution to the identified problem; and

WHEREAS, Section 105 of the Water Resources Development Act of 1986 (Public Law 99-662, as amended) specifies the cost sharing requirements applicable to the Study;

WHEREAS, the Sponsors have the authority and capability to furnish the cooperation hereinafter set forth and are willing to participate in study cost sharing and financing in accordance with the terms of this Agreement; and

WHEREAS, the Sponsors and the Government understand that entering into this Agreement in no way obligates either party to implement a project and that whether the Government supports a project authorization and budgets it for implementation depends upon, among other things, the outcome of the Study and whether the proposed solution is consistent with the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies and with the budget priorities of the Administration;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For the purposes of this Agreement:

- A. The term "Study Costs" shall mean all disbursements by the Government pursuant to this Agreement, from Federal appropriations or from funds made available to the Government by the Sponsors, and all negotiated costs of work performed by the Sponsors pursuant to this Agreement. Study Costs shall include, but not be limited to: labor charges; direct costs; overhead expenses; supervision and administration costs; the costs of participation in Study Management and Coordination in accordance with Article IV of this Agreement; the costs of contracts with third parties, including termination or suspension charges; and any termination or suspension costs (ordinarily defined as those costs necessary to terminate ongoing contracts or obligations and to properly safeguard the work already accomplished) associated with this Agreement.
- B. The term "estimated Study Costs" shall mean the estimated cost of performing the Study as of the effective date of this Agreement, as specified in Article III.A. of this Agreement.
- C. The term "excess Study Costs" shall mean Study Costs that exceed the estimated Study Costs and that do not result from mutual agreement of the parties, a change in Federal law that increases the cost of the Study, or a change in the scope of the Study requested by the Sponsors.
- D. The term "study period" shall mean the time period for conducting the Study, commencing with the release to the U.S. Army Corps of Engineers Los Angeles District of initial Federal feasibility funds following the execution of this Agreement and ending when the Assistant Secretary of the Army (Civil Works) submits the feasibility report to the Office of Management and Budget (OMB) for review for consistency with the policies and programs of the President.
- E. The term "PMP" shall mean the Project Management Plan, which is attached to this Agreement and which shall not be considered binding on either party and is subject to change by the Government, in consultation with the Sponsors.
- F. The term "negotiated costs" shall mean the costs of in-kind services to be provided by the Sponsors in accordance with the PMP.
- G. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

ARTICLE II - OBLIGATIONS OF PARTIES

- A. The Government, using funds and in-kind services provided by the Sponsors and funds appropriated by the Congress of the United States, shall expeditiously prosecute and complete the Study, in accordance with the provisions of this Agreement and Federal laws, regulations, and policies.

B. In accordance with this Article and Article III.A., III.B. and III.C. of this Agreement, the Sponsors shall contribute cash and in-kind services equal to fifty (50) percent of Study Costs other than excess Study Costs. The Sponsors may, consistent with applicable law and regulations, contribute up to 50 percent of Study Costs through the provision of in-kind services.

The in-kind services to be provided by the Sponsors, the estimated negotiated costs for those services, and the estimated schedule under which those services are to be provided are specified in the PMP. Negotiated costs shall be subject to an audit by the Government to determine reasonableness, allocability, and allowability.

C. The Sponsors shall pay a fifty (50) percent share of excess Study Costs in accordance with Article III.D. of this Agreement.

D. The Sponsors understand that the schedule of work may require the Sponsors to provide cash or in-kind services at a rate that may result in the Sponsors temporarily diverging from the obligations concerning cash and in-kind services specified in paragraph B. of this Article. Such temporary divergences shall be identified in the quarterly reports provided for in Article III.A. of this Agreement and shall not alter the obligations concerning costs and services specified in paragraph B. of this Article or the obligations concerning payment specified in Article III of this Agreement.

E. If, upon the award of any contract or the performance of any in-house work for the Study by the Government or the Sponsors, cumulative financial obligations of the Government and the Sponsors would result in excess Study Costs, the Government and the Sponsors agree to defer award of that and all subsequent contracts, and performance of that and all subsequent in-house work, for the Study until the Government and the Sponsors agree to proceed. Should the Government and the sponsors require time to arrive at a decision, the Agreement will be suspended in accordance with Article X., for a period of not to exceed six months. In the event the Government and the sponsors have not reached an agreement to proceed by the end of their 6 month period, the Agreement may be subject to termination in accordance with Article X.

F. No Federal funds may be used to meet the Sponsors' share of Study Costs unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

G. The award and management of any contract with a third party in furtherance of this Agreement which obligates Federal appropriations shall be exclusively within the control of the Government. The award and management of any contract by the Sponsors with a third party in furtherance of this Agreement which obligates funds of the Sponsors and does not obligate Federal appropriations shall be exclusively within the control of the Sponsors, but shall be subject to applicable Federal laws and regulations.

ARTICLE III - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties, current projections of Study Costs, current projections of each party's share of Study Costs, and current projections of the amount of Study Costs that will result in excess Study Costs. At least quarterly, the Government shall provide the Sponsors a report setting forth this information. As of the effective date of this Agreement, estimated Study Costs are \$8,200,000 and the Sponsors'

share of estimated Study Costs is \$4,050,000. In order to meet the Sponsors' cash payment requirements for their share of estimated Study Costs, the Sponsors must provide a cash contribution currently estimated to be \$139,000. The dollar amounts set forth in this Article are based upon the Government's best estimates, which reflect the scope of the study described in the PMP, projected costs, price-level changes, and anticipated inflation. Such cost estimates are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Sponsors.

B. The Sponsors shall provide their cash contribution required under Article II.B. of this Agreement in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Sponsors by September 1 of each year of the estimated funds that will be required from the Sponsors to meet the Sponsors' share of Study Costs for the upcoming fiscal year.

2. No later than 30 calendar days prior to the scheduled date for the Government's issuance of the solicitation for the first contract for the Study or for the Government's anticipated first significant in-house expenditure for the Study, the Government shall notify the Sponsors in writing of the funds the Government determines to be required from the Sponsors to meet their required share of Study Costs for the first fiscal year of the Study. No later than 15 calendar days thereafter, the Sponsors shall provide the Government the full amount of the required funds by delivering a check payable to "FAO, USAED, Los Angeles District" to the District Engineer

3. For the second and subsequent fiscal years of the Study, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Sponsors in writing of the funds the Government determines to be required from the Sponsors to meet their required share of Study Costs for that fiscal year, taking into account any temporary divergences identified under Article II.D of this Agreement. No later than 30 calendar days prior to the beginning of the fiscal year, the Sponsors shall make the full amount of the required funds available to the Government through the funding mechanism specified in paragraph B.2. of this Article.

4. The Government shall draw from the funds provided by the Sponsors such sums as the Government deems necessary to cover the Sponsors' share of contractual and in-house fiscal obligations attributable to the Study as they are incurred.

5. In the event the Government determines that the Sponsors must provide additional funds to meet their share of Study Costs, the Government shall so notify the Sponsors in writing. No later than 60 calendar days after receipt of such notice, the Sponsors shall make the full amount of the additional required funds available through the funding mechanism specified in paragraph B.2. of this Article.

C. Within ninety (90) days after the conclusion of the Study Period or termination of this Agreement, the Government shall conduct a final accounting of Study Costs, including disbursements by the Government of Federal funds, cash contributions by the Sponsors, the amount of any excess Study Costs, and credits for the negotiated costs of the Sponsors, and shall furnish the Sponsors with the results of this accounting. Within thirty (30) days thereafter, the Government, subject to the availability of funds, shall reimburse the Sponsors for the excess, if any, of cash contributions and credits given over its required share of Study Costs, other than

excess Study Costs, or the Sponsors shall provide the Government any cash contributions required for the Sponsors to meet their required share of Study Costs other than excess Study Costs.

D. The Sponsors shall provide their cash contribution for excess Study Costs as required under Article II.C. of this Agreement by delivering a check payable to "FAO, USAED, Los Angeles District" to the District Engineer as follows:

1. After the project that is the subject of this Study has been authorized for construction, no later than the date on which a Project Cooperation Agreement is entered into for the project; or

2. In the event the project that is the subject of this Study is not authorized for construction by a date that is no later than 5 years of the date of the final report of the Chief of Engineers concerning the project, or by a date that is no later than 2 years after the date of the termination of the study, the Sponsors shall pay their share of excess costs on that date (5 years after the date of the Chief of Engineers or 2 year after the date of the termination of the study).

ARTICLE IV - STUDY MANAGEMENT AND COORDINATION

A. To provide for consistent and effective communication, the Sponsors and the Government shall appoint named senior representatives to an Executive Committee. Thereafter, the Executive Committee shall meet regularly until the end of the Study Period.

B. Until the end of the Study Period, the Executive Committee shall generally oversee the Study consistently with the PMP.

C. The Executive Committee may make recommendations that it deems warranted to the District Engineer on matters that it oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider such recommendations. The Government has the discretion to accept, reject, or modify the Executive Committee's recommendations.

D. The Executive Committee shall appoint representatives to serve on a Study Management Team. The Study Management Team shall keep the Executive Committee informed of the progress of the Study and of significant pending issues and actions, and shall prepare periodic reports on the progress of all work items identified in the PMP.

E. The costs of participation in the Executive Committee (including the cost to serve on the Study Management Team) shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE V - DISPUTES

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay an equal share of any costs for the services provided by such a third party as such costs are incurred. Such costs shall not be included in Study Costs. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - MAINTENANCE OF RECORDS

A. Within 60 days of the effective date of this Agreement, the Government and the Sponsors shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Study Costs. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments at 32 C.F.R. Section 33.20. The Government and the Sponsors shall maintain such books, records, documents, and other evidence in accordance with these procedures for a minimum of three years after completion of the Study and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Sponsors shall each allow the other to inspect such books, documents, records, and other evidence.

B. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Sponsors are required to conduct under the Single Audit Act Amendments of 1996, 31 U.S.C. Sections 7501-7507. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits shall be included in total Study Costs and shared in accordance with the provisions of this Agreement.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Sponsors act in independent capacities in the performance of their respective rights and obligations under this Agreement, and neither is to be considered the officer, agent, or employee of the other.

ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of the Sponsors' rights and obligations under this Agreement, the Sponsors agree

to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and Department of Defense Directive 5500.11 issued pursuant thereto and published in 32 C.F.R. Part 195, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE X - TERMINATION OR SUSPENSION

A. This Agreement shall terminate at the conclusion of the Study Period, and neither the Government nor the Sponsors shall have any further obligations hereunder, except as provided in Article III.C.; provided, that prior to such time and upon thirty (30) days written notice, any party may terminate or suspend this Agreement. In addition, the Government shall terminate this Agreement immediately upon any failure of the parties to agree to extend the study under Article II.E. of this agreement, or upon the failure of the sponsors to fulfill their obligation under Article III. of this Agreement. In the event that either party elects to terminate this Agreement, both parties shall conclude their activities relating to the Study and proceed to a final accounting in accordance with Article III.C. and III.D. of this Agreement. Upon termination of this Agreement, all data and information generated as part of the Study shall be made available to both parties.

B. Any termination of this Agreement shall not relieve the parties of liability for any obligations previously incurred, including the costs of closing out or transferring any existing contracts.

C. In the event that any of the Sponsors elect to terminate its own responsibilities under this Agreement, and there are remaining Sponsors who elect to continue to participate in the Study, the Government shall negotiate in good faith with the remaining Sponsors to effect a timely and productive conclusion to that portion of the Study pertaining to the remaining Sponsor's area of statutory authority. The Government shall prepare a revised PMP and revised estimated Study costs, including the remaining Sponsor's share, to complete that portion of the Study of interest to the remaining Sponsor. If the remaining Sponsor elects to complete the Study, this Agreement shall be amended to reflect the negotiated revisions to the PMP and Study costs. Cost amendments to this Agreement made pursuant to this sub-article shall reflect credits for the previous cash and in-kind contributions of all Study Sponsors and shall reflect task reductions made as a result of withdrawal of any Study Sponsor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer for the U.S. Army Corps of Engineers, Los Angeles District.

DEPARTMENT OF THE ARMY

By _____
Colonel, Corps of Engineers
District Engineer
Los Angeles District

VENTURA COUNTY
WATERSHED PROTECTION DISTRICT

LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT

By _____
Director, Public Works Agency

By _____
Chief Engineer

APPROVED AS TO FORM:

Office of the County Counsel

By _____
Deputy

G.K. 4-29-04
Frankie Scott